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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID ABITBOL; individually and on behalf of all others similarly situated, Plaintiff, vs. SENIOR LIFE SERVICES, INC., and DOES 1 through 10, inclusive, and each of them, Defendant.

)) Case No.
)) **CLASS ACTION**
)) **COMPLAINT FOR VIOLATIONS**
)) **OF:**
) 1. NEGLIGENT VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227(b)]
) 2. WILLFUL VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227(b)]

)) **DEMAND FOR JURY TRIAL**
)
)
)
)

Plaintiff DAVID ABITBOL (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of SENIOR LIFE SERVICES, INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related regulations thereby invading Plaintiff’s privacy.

2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

“[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.”

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's

1 purpose).

2 4. Congress also specifically found that “the evidence presented to the
3 Congress indicates that automated or prerecorded calls are a nuisance and an
4 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also,*
5 *Mims*, 132 S. Ct. at 744.

6 5. In a recent decision, the Supreme Court interpreted the term
7 “automatic telephone dialing system” and held that “[t]o qualify as an ‘automatic
8 telephone dialing system,’ a device must have the capacity either to store a
9 telephone number using a random or sequential generator **or** to produce a telephone
10 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*,
11 141 S.Ct. 1163 (2021) (emphasis added).

12 6. In *Duguid*, the Supreme Court provided an example of such systems,
13 stating: “For instance, an autodialer might use a random number generator to
14 determine the order in which to pick phone numbers from a preproduced list. It
15 would then store those numbers to be dialed at a later time.” *Id.* at 1171-72 fn. 7.

16 7. The Sixth Circuit has recognized a distinction between automated
17 calls placed by a dialing system and fielded by a live agent, and agentless
18 prerecorded voice calls: “Congress drew an explicit distinction between ‘automated
19 telephone calls that deliver an artificial or prerecorded voice message’ on the one
20 hand and ‘calls place by ‘live’ persons’ on the other.” *Ashland Hosp. Corp. v. Serv.*
21 *Employees Int’l Union, Dist.* 1199 WV/KY/OH, 708 F.3d 737,743 (6th Cir. 2013).

22 8. Similarly, the FTC has observed that “prerecorded calls are by their
23 very nature one-sided conversations, and if there is no opportunity for consumers
24 to ask questions, offers may not be sufficiently clear for consumers to make
25 informed choices before pressing a button or saying yes to make a purchase.” 73
26 FR 51164-01, 51167 (Aug. 29, 2008).

27 9. In the present case, Defendant and its agent utilized both an ATDS to
28 initiate calls to Plaintiff and a prerecorded voice to communicate sales pitch

1 messages to Plaintiff. Plaintiff never provided express consent to Defendant prior
2 to Defendant placing the calls to Plaintiff. As such, both acts (use of ATDS and
3 prerecorded voice calls) give rise to separate claims for violation of the TCPA.

4 **JURISDICTION & VENUE**

5 10. Jurisdiction is proper under 28 U.S.C. § 1331 because Plaintiff's
6 claims arise out of federal law, the TCPA.

7 11. Venue is proper in the United States District Court for the Central
8 District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial
9 portion of the events and omissions giving rise to this action occurred in this
10 District.

11 **PARTIES**

12 12. Plaintiff, DAVID ABITBOL ("Plaintiff"), is a natural person residing
13 in California and is a "person" as defined by 47 U.S.C. § 153(39).

14 13. Defendant, SENIOR LIFE SERVICES, INC. ("Defendant") is a final
15 expense insurance provider and is a "person" as defined by 47 U.S.C. § 153(39).

16 14. The above-named Defendant, and its subsidiaries and agents, are
17 collectively referred to as "Defendants." The true names and capacities of the
18 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
19 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
20 names. Each of the Defendants designated herein as a DOE is legally responsible
21 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
22 Complaint to reflect the true names and capacities of the DOE Defendants when
23 such identities become known.

24 15. Plaintiff is informed and believes that at all relevant times, each and
25 every Defendant was acting as an agent and/or employee of each of the other
26 Defendants and was acting within the course and scope of said agency and/or
27 employment with the full knowledge and consent of each of the other Defendants.
28 Plaintiff is informed and believes that each of the acts and/or omissions complained

1 of herein was made known to, and ratified by, each of the other Defendants.

2 **COMMON FACTUAL ALLEGATIONS**

3 **A. Defendant's Business Platform and Practices**

4 16. Defendant's business practices include making thousands of
5 autodialed telemarketing calls to potential customers every day in order to inquire
6 whether the consumer is interested in need of life insurance, check the accuracy of
7 their contact information, and determine whether the consumer is interested in
8 speaking with an agent about their insurance needs.

9 17. One of the methods Defendant uses to generate potential customers is
10 through the utilization of Internet marketing. Defendant owns and operates various
11 websites that are devoted to offering insurance quotes for specific types of life
12 insurance that they offer consumers who search for over the Internet.

13 18. Upon information and belief, Defendant also engages and works with
14 third-party call centers to contact consumers who never inquired about insurance
15 through *any* medium. In one instance, a third party, utilizing a sophisticated
16 automated voice response system, contacts consumers and attempts to illicit a
17 positive response from each when the computer asks whether that individual is
18 interested in receiving information about insurance. The computer then
19 immediately forwards the caller's information as a positive hit to Defendant, who
20 then places a subsequent call to that consumer for the purpose of making a sales
21 pitch. Defendant and/or the third parties believe they have circumvented the TCPA
22 and have legal consent to place the calls to these individuals.

23 19. The problem is, on information and belief, the call center forwards
24 contact information for any live body who answers the call and communicates with
25 the automated system, regardless of whether that person gave valid consent to
26 receive subsequent marketing calls from Defendant. Furthermore, there is no
27 question the initial calls from the call centers are placed in violation of the TCPA.
28 Therefore, the call centers (agents) are also liable for violating the TCPA, as are

1 the principals (Defendant).

2 **B. Defendant's Agents Use Prerecorded Voice Avatar Systems In**
3 **Conjunction With Predictive Dialers To Robodial Consumers Without**
4 **Consent**

5 20. Defendant contracts with third party companies who are charged with
6 generating potential customers on its behalf. Some of these third-party lead
7 generators have been identified as culprits for robodialing consumers without prior
8 express consent using a prerecorded voice to solicit Defendant's services in the
9 past. Defendant is thus aware that 1) often its potential customers are being
10 illegally generated without the requisite level of consent; 2) prerecorded voice
11 technology is being used to do so; and 3) this conduct is inherently risky and
12 intrusive by nature.

13 21. Defendant has not put reasonable policies and procedures in place to
14 safeguard consumers from such conduct by its lead generators, and thus has ratified
15 their acts.

16 22. Defendant has contracts with lead generators who are acting within
17 the scope of their agency by engaging in the unlawful acts alleged herein.

18 23. Reasonable consumers such as and including Plaintiff are recipients
19 of unwanted telemarketing calls as a result of such conduct, and form the
20 reasonable belief that such lead generators are acting on behalf of Defendant, based
21 on the fact that 1) they are calling to inquire about life insurance services; 2) they
22 request personal identifying information during the generation phone calls; 3) they
23 provide that personal identifying information to Defendant; and 4) Defendant
24 utilizes that personal identifying information thereafter to further contact the
25 consumer and follow up. Based on this, a consumer would reasonably believe that
26 the vendor was acting within the scope of their agency with Defendant, and
27 thereafter providing their information to Defendant, i.e. sharing systems and
28 processes with one another. Such belief is premised, in part, based on a

1 manifestation of activity engaged in by Defendant.

2 24. On these bases, Plaintiff alleges that Defendant is vicariously liable,
3 under a theory of direct agency, apparent authority, and/or ratification, for the
4 conduct of its third-party lead generation vendors.

5 25. Such vendors place calls using a predictive dialer, which is hooked to
6 an avatar system.

7 26. A spreadsheet or text delimited file is loaded into a robodialing
8 platform, which is programmed in advance to engage in automated predictive
9 dialing campaigns.

10 27. The predictive dialer uses a random or sequential number generator to
11 index and parse the telephone number data, in order to store it in temporary cache
12 ram memory. A random or sequential number generator is then used to produce
13 the stored telephone numbers from storage to the dialing platform for purposes.
14 The dialing platform is preprogrammed to dial at specific rate, time, and interval,
15 using algorithmic dialing systems, to maximize the efficiency of the system in
16 reaching as many consumers who pick up calls as possible. These calls are
17 happening in the background of the system, with only a percentage of them
18 resulting in a live person picking up.

19 28. When a live person picks up, the system transfers the call to an
20 available agent, who uses an avatar soundboard to play prerecorded messages to
21 the consumer, in order to ask prequalifying questions to the consumer. These
22 preapproval questions are based on criteria set by Defendant, in order to narrow the
23 potential customers down to prospective purchasers of Defendant's services. As a
24 crude illustration, for every 1,000 consumers who are dialed, 100 may pick up the
25 call, 50 may stay on the line long enough to speak with an agent, and ultimately 5
26 may run through the prequalifying questions asked by the avatar system. Those
27 five will then have their personal identifying information, along with some
28 information regarding their vehicle, and answers to the avatar questions, provided

1 to Defendant, so that Defendant's agents can follow up on that prospective lead for
2 further sales efforts.

3 29. The system used by the lead generator under the agency principles
4 described above are placed on behalf of Defendant and utilize both an ATDS and
5 prerecorded voice. They utilize a form of automated predictive dialing using
6 campaigns, which rely on a random or sequential number generator to both store
7 and dial the telephone numbers. The coding for such predictive dialing platforms
8 will be described in greater detail below, but Plaintiff alleges this on information
9 and belief, based on counsel's discussions with software engineers who have
10 reviewed examples of dialer code, and understandings that this type of
11 programming and functionality would be utilized in most predictive dialing
12 platforms.

13 30. The capacity of Defendant's platform to use random or sequential
14 number generators to store or produce telephone numbers will be confirmed or
15 refuted based on the code. Plaintiff alleges that such code exists in the dialing
16 platform used by Defendant.

17 *i. The Predictive Dialer*

18 31. The following is the FCC's description of a predictive dialer:

19 “A predictive dialer is an automated dialing system that uses a
20 complex set of algorithms to automatically dial consumers’
21 telephone numbers in a manner that “predicts” the time when a
22 consumer will answer the phone and a telemarketer will be available
23 to take the call. Such software programs are set up in order to
24 minimize the amount of downtime for a telemarketer. In some
25 instances, a consumer answers the phone only to hear “dead air”
26 because no telemarketer is free to take the call...A predictive dialer
27 is equipment that dials numbers and, when certain computer
28 software is attached, also assists telemarketers in predicting when a
sales agent will be available to take calls. The hardware, when paired
with certain software, has the capacity to store or produce numbers
and dial those numbers at random, in sequential order, or from a
database of numbers. Predictive dialers initiate phone calls while

1 telemarketers are talking to other consumers and frequently
2 disconnect those calls when a telemarketer is unavailable to take the
3 next call...Predictive dialers reduce the amount of down time for
4 sales agents, as consumers are more likely to be on the line when the
telemarketer completes a call."

5 *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*
6 of 1991, Report and Order, 18 FCC Rcd. 14014, 14115 ¶¶ 8 fn 31, 131, and 146
(2003) ("2003 FCC Order").

7 32. The following is a description, in plain English, of a predictive dialer
8 typically operates: A dialer operator accesses a database of consumer contact
9 information, which is typically contained in a text delimited file, either in a CSV
10 file, text file, Microsoft Excel, or Microsoft Access file. In essence, this is a
11 spreadsheet, containing rows and columns of data, which includes telephone
12 numbers. The operator will load this data set into the dialing platform. The dialing
13 system will cut the data set into individual lines, unique to each telephone number
14 with an assigned row using a parser. Parsers will separate the data, and then index
15 the telephone numbers using either random or sequential number generators, but
16 most commonly sequential number generators. The program will then store the
17 telephone number using that number generator. The data is stored in temporary
18 cache or RAM memory, to be accessed by the dialer platform thereafter. A random
19 or sequential number generator is programmed to select and produce,
20 automatically, without any organic triggering event by a human being, the
21 telephone numbers, i.e. in accessing them from storage. Once the number
22 generator corresponds to a matching number in the stored list, that telephone
23 number will be "produced" from storage to the dialer, which then automatically
24 dials that telephone number. Thus, predictive dialers have the capacity to use
25 random or sequential number generators to both store and produce the telephone
26 number to be automatically dialed by the dialing program, without human
27 intervention.

1 33. To illustrate this using a real-world example that was provided to
2 undersigned counsel by a software engineer who is fluent in Java and has reviewed
3 dialer code, imagine a list of numbers as a lengthy sheet of lined notebook paper. A
4 parser cuts this into strips, and stores it in a paper tray, which is attached to a
5 scanner. Each strip of paper has a row number, and a telephone number. The
6 scanner uses a program to generate numbers, either sequentially or randomly. That
7 generator is hooked to the paper feed, which instructs the scanner to match the
8 generated number, to the corresponding strip of paper in the tray, and then scan that
9 telephone number from the stored list, through the scanner, and out the other side,
10 at which time the scanner is dialing the telephone number on that strip of
11 paper. Now imagine a scanner that accomplishes this with a tray containing
12 thousands of pages of paper in the blink of an eye. Once the tray is empty, the
13 dialing campaign is complete.

14 34. The program for dialing campaigns can be pre-set like a sprinkler
15 timer to dial the phone numbers at pre-set intervals and pre-set time periods, based
16 on how many available agents there are expected to receive calls. This is done by
17 way of yet another algorithm that is programmed to “predict” how long an average
18 call with a consumer takes, and dial only a certain volume of phone numbers per
19 time interval, so as to attempt to reach the highest possible volume of consumers,
20 without reaching so many consumers that the “abandonment rate” exceeds
21 regulatory limits set forth by the FCC. In crude terms, imagine a call center with
22 100 agents, a 10% chance that a call will be answered, and an average call length
23 of one minute. The predictive dialer will “predict” that it should place 1,000 calls
24 per minute, because 100 of those calls will be answered, and so 100 agents will be
25 available to speak with the consumer. Once those agents get off the line, calls will
26 already be automatically happening in the background from the autodialer’s
27 random and sequential number generator described above, and agents will be
28 connected with callers who pick up the line. This process is sometimes referred to

1 as algorithmic dialing.

2 35. Due to natural statistical variation, sometimes calls will last longer
3 than a minute, and there will be no available agent right away. This results in dead
4 air at the beginning of such calls, or abandoned calls. The percentage of such calls
5 that are picked up and result in dead air, is referred to as the “abandonment rate”
6 and is regulated by the FCC, because it is incredibly annoying to pick up the line
7 and be greeted with silence. This was heavily discussed during the congressional
8 hearings as highly problematic in 1991 during the TCPA hearings. In other words,
9 this is not new technology. It is the same technology Congress was trying to
10 regulate when it enacted the TCPA. It is the same technology that has been subject
11 to FCC regulations for decades.

12 36. Plaintiff alleges on information and belief that Defendant’s system has
13 predictive dialing capacity substantively similar to the illustrations described
14 herein, and therefore has the capacity to store and produce telephone number using
15 a random or sequential number generator.

16 ***ii. The Random/Sequential Number Generator***

17 37. Undersigned counsel have studied the code used to program predictive
18 dialers and other similarly-functioning autodialers in the past, with the assistance
19 of software engineers fluent in Java, and have found that such autodialers, when
20 used in automated mode, execute code that relies upon random or sequential
21 number generation to both store and produce numbers to be dialed by the
22 dialer. For instance, a common “parser” used in SMS blasters and predictive
23 dialing coding integrates the following open-source Apache code into an
24 autodialing dialing platform:

25 730 if (!this.recordList.isEmpty()) {
26 731 this.recordNumber++;
27 732 final String comment = sb == null ? null : sb.toString();
28 733 result=newCSVRecord(this,this.recordList.toArray(Constants.E

```
1 MPTY_STRING_ARRAY), comment,  
2     734         this.recordNumber, startCharPosition);  
3     735     }  
4     736     return result;  
5     737 }
```

6 38. These lines of code, and specifically the “++” in line 731, represent an
7 operator token that generates sequential numbers as part of a loop. This loop is
8 used to select which number from the CSV file, will be dialed, and produce that
9 number to the dialer using a CSV parser. Such programs can dial thousands of
10 consumers in mere seconds, without any human intervention whatsoever, based on
11 whatever abandonment rate is targeted by the operator of the dialing platform. The
12 sequential number generator in the code above is executed in the process of mass
13 predictive dialing. The program cannot function, and therefore cannot dial any
14 phone numbers at all, without this sequential number generator.

15 39. Plaintiff alleges that Defendant used a predictive dialing system with
16 the similar capacity to autodial numbers as shown above. Functionally, that is
17 simply how predictive dialers work. They rely on random or sequential number
18 generators to instruct the data set to produce telephone numbers to the
19 dialer. Without this key component, a dialing campaign would require an agent to
20 manually place the call, through organic decision making, or as was the case
21 in *Duguid v. Facebook*, through some other organic one-to-one triggering event
22 that instructs the dialer to place the call.

23 40. Plaintiff will not be able to demonstrate whether the code for
24 Defendant’s dialing system contains such random or sequential number generators
25 without doing discovery and obtaining the code for the dialing platform. Plaintiff
26 makes these allegations on information and belief based on the volume of calls he
27 received, the fact that there was a pause at the beginning of the calls, and the fact
28 that the calls were spoofed, which are all indicia that they were autodialed with a

1 | predictive dialer.

2 41. The problem with these known realities is that because Plaintiff does
3 not and could not ever have access to Defendant's proprietary code, which is in its
4 sole possession, Plaintiff cannot allege with any more specificity that the system's
5 code contains such language. However, based on detailed discussions with experts
6 and years of litigation and expertise surrounding such technology, Plaintiff, and his
7 counsel, have a legitimate and sufficient good faith basis to make these allegations,
8 and assert that if the system is a traditional predictive dialer as alleged, *then it will*
9 *have some variation on the coding that is described herein*, which will undoubtedly
10 include either random or sequential number generators that are being executed in
11 conjunction with storing and dialing the telephone numbers, including the dialing
12 of Plaintiff's phone number.

13 42. In Defendant's overzealous attempt to market its services, it placed
14 (and continues to place) phone calls via ATDS and prerecorded voice calls to
15 consumers who never provided consent to call and to consumers having no
16 relationship with Defendant.

17 43. Defendant knowingly made (and continues to make) these
18 telemarketing calls via ATDS and prerecorded voice calls without the prior express
19 written consent of the call recipients. As such, Defendant not only invaded the
20 personal privacy of Plaintiff and members of the putative Class, but also
21 intentionally and repeatedly violated the TCPA.

FACTS SPECIFIC TO PLAINTIFF

23 44. Plaintiff is the regular carrier and exclusive user of the telephone
24 assigned the number ending in -6443. The number is assigned to a cellular
25 telephone service for which Plaintiff is charged for incoming calls pursuant to 47
26 U.S.C. § 227(b)(1).

27 | 45. Plaintiff has never had a business relationship with Defendant.

28 | 46. Plaintiff never provided Defendant with prior express consent to

1 contact him on his phone via a telephone call.

2 47. Plaintiff's telephone number ending in -6443 has been on the national
3 Do Not Call list since on or about February 18, 2020.

4 48. Nonetheless, Defendant and its agents called Plaintiff multiple times
5 on his cell phone, attempting to sell Plaintiff life insurance after this date.

6 49. On or about January 16, 2021, Defendant placed an automatically
7 dialed call to Plaintiff with the caller ID of 619-745-5296. Plaintiff answered the
8 call several times before hearing a click and hearing a live representative of
9 Defendant begin speaking. Defendant's representative informed Plaintiff that he
10 would like to ask the Plaintiff some questions and get Plaintiff in contact with
11 another representative. Plaintiff ended the call.

12 50. On or about January 18, 2021, Defendant placed an automatically
13 dialed call to Plaintiff with the caller ID of 209-257-3266. Plaintiff answered the
14 call several times before hearing a click and hearing a live representative of
15 Defendant begin speaking. The Defendant's representative asked Plaintiff about
16 his age and the identity of his beneficiary, then informed Plaintiff that another
17 representative would call later.

18 51. On or about February 3, 2021, Defendant placed a live call to Plaintiff
19 with the caller ID of 772-321-9595. Plaintiff spoke to a representative who
20 informed him that she was calling on behalf of Defendant and that she would send
21 Plaintiff an email to follow up.

22 52. On or about February 3, 2021, Defendant placed a live call to Plaintiff
23 with the caller ID of 772-321-9595. Plaintiff spoke to a representative of Defendant
24 named Krystal (surname unknown). Plaintiff asked Krystal for an email address in
25 an effort to determine who was calling him.

26 53. Plaintiff suffered a concrete and particularized injury in fact as a result
27 of the unsolicited telemarketing calls he received. The calls invaded Plaintiff's
28 privacy, causing annoyance, wasting his time, consuming use of his smartphone

device without authorization, and otherwise invading his privacy and intruding into his personal affairs without permission. The telemarketing calls also constituted a form of the precise harm that Congress was attempting to prohibit with the TCPA, which was designed to remedy known tortious acts including invasions of privacy and nuisances caused to Americans by automated telemarketing calls placed without consent. Plaintiff actually suffered this precise injury by receiving the unwanted telephone calls, and having his privacy so invaded through a disturbance of his solitude, and unwanted intrusion of his technology and personal space. Accordingly, Plaintiff has Article III standing to seek redress for these violations in Federal Court.

11 54. The calls Defendant made to Plaintiff invaded Plaintiff's privacy and
12 violated 47 U.S.C. § 227(b)-(c).

13 55. Plaintiff has reason to believe Defendant has called, and continues to
14 call, thousands of wireless telephone customers to market its products and services
15 without consent required by the TCPA.

16 56. In order to redress injuries caused by Defendant's violations of the
17 TCPA, Plaintiff, on behalf of himself and a class of similarly situated individuals,
18 brings suit under the TCPA, 47 U.S.C. § 227, *et seq.*, which prohibits certain
19 unsolicited calls to cell phones.

20 57. On behalf of the Class, Plaintiff seeks an injunction requiring
21 Defendant to cease all wireless telemarketing and spam activities and an award of
22 statutory damages to the class members, together with costs and reasonable
23 attorneys' fees.

CLASS ALLEGATIONS

25 58. Plaintiff brings this action individually and on behalf of all others
26 similarly situated, as a member of the proposed classes (together, "Classes"),
27 defined as follows:

1 ATDS Class:

2 All persons within the United States who received any
3 solicitation/telemarketing telephone calls made by or on
4 behalf of Defendant to said person's cellular telephone
5 made through the use of any automatic telephone dialing
6 system and/or an artificial or prerecorded voice and such
7 person had not previously consented to receiving such
calls within the four years prior to the filing of this
Complaint through the date of class certification.

8 Sold Lead Subclass:

9 All persons within the United States who received any
10 solicitation/telemarketing telephone calls made by or on
11 behalf of Defendant, to said person's cellular telephone
12 made through the use of any automatic telephone dialing
13 system and/or an artificial or prerecorded voice and such
14 person had not previously consented to receiving such
calls, and who were called directly by Defendant after
15 their information was transferred to Defendant by the
same third party lead vendor as was the case for Plaintiff,
16 within the four years prior to the filing of this Complaint
17 through the date of class certification.

18 DNC Class:

19 All persons within the United States whose telephone
20 numbers were registered on the National Do-Not-Call
21 Registry for at least 30 days, who had not granted
22 Defendant prior express consent nor had a prior
23 established business relationship with Defendant, or who
24 had revoked such consent or prior established business
25 relationship, who received more than one call made by or
26 on behalf of Defendant that promoted Defendant's
27 products or services, within any 12-month period, within
the four years prior to the filing of this Complaint through
the date of class certification.

1 59. Plaintiff represents, and is a member of, The ATDS Class, consisting
2 of all persons within the United States who received any solicitation/telemarketing
3 telephone calls from Defendant to said person's cellular telephone made through
4 the use of any automatic telephone dialing system or an artificial or prerecorded
5 voice and such person had not previously not provided their cellular telephone
6 number to Defendant within the four years prior to the filing of this Complaint
7 through the date of class certification.

8 60. Plaintiff represents, and is a member of, the DNC Class, consisting of
9 all persons within the United States whose telephone numbers were registered on
10 the National Do-Not-Call Registry for at least 30 days, who had not granted
11 Defendant prior express consent nor had a prior established business relationship
12 with Defendant, or who had revoked such consent or prior established business
13 relationship, who received more than one call made by or on behalf of Defendant
14 that promoted Defendant's products or services, within any 12-month period,
15 within the four years prior to the filing of this Complaint through the date of class
16 certification.

17 61. Defendant, its employees and agents are excluded from The Classes.
18 Plaintiff does not know the number of members in The Classes, but believes the
19 Classes' members number in the thousands, if not more. Thus, this matter should
20 be certified as a Class Action to assist in the expeditious litigation of the matter.

21 62. The Classes are so numerous that the individual joinder of all class
22 members is impractical. While the exact number and identities of The Classes'
23 members are unknown to Plaintiff at this time and can only be ascertained through
24 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
25 The Classes include thousands of members. Plaintiff alleges that The Classes'
26 members may be ascertained by the records maintained by Defendant.

27 63. Plaintiff and members of the ATDS Class were harmed by the acts of
28 Defendant in at least the following ways: Defendant illegally contacted Plaintiff

1 and ATDS Class members via their cellular telephones thereby causing Plaintiff
2 and ATDS Class members to incur certain charges or reduced telephone time for
3 which Plaintiff and the ATDS Class members had previously paid by having to
4 retrieve or administer messages left by Defendant during those illegal calls, and
5 invading the privacy of said Plaintiff and the ATDS Class members.

6 64. Common questions of fact and law exist as to all members of the
7 ATDS Class which predominate over any questions affecting only individual
8 members of the ATDS Class. These common legal and factual questions, which
9 do not vary between ATDS Class members, and which may be determined without
10 reference to the individual circumstances of any ATDS Class members, include,
11 but are not limited to, the following:

- 12 a. Whether, within the four years prior to the filing of this
13 Complaint through the date of class certification, Defendant
14 made any telemarketing/solicitation call (other than a call made
15 for emergency purposes or made with the prior express consent
16 of the called party) to the ATDS Class members using any
17 automatic telephone dialing system or any artificial or
18 prerecorded voice to any telephone number assigned to a
19 cellular telephone service;
- 20 b. Whether Plaintiff and the ATDS Class members were damaged
21 thereby, and the extent of damages for such violation; and
- 22 c. Whether Defendant should be enjoined from engaging in such
23 conduct in the future.

24 65. As a person that received numerous telemarketing/solicitation calls
25 from Defendant using an automatic telephone dialing system or an artificial or
26 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
27 claims that are typical of the ATDS Class.

28 66. Plaintiff and members of the DNC Class were harmed by the acts of

1 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
2 and DNC Class members via their cellular telephones thereby causing Plaintiff and
3 DNC Class members to incur certain charges or reduced telephone time for which
4 Plaintiff and the DNC Class members had previously paid by having to retrieve or
5 administer messages left by Defendant during those illegal calls, and invading the
6 privacy of said Plaintiff and the DNC Class members.

7 67. Common questions of fact and law exist as to all members of the DNC
8 Class which predominate over any questions affecting only individual members of
9 the DNC Class. These common legal and factual questions, which do not vary
10 between DNC Class members, and which may be determined without reference to
11 the individual circumstances of any DNC Class members, include, but are not
12 limited to, the following:

- 13 a. Whether, within the four years prior to the filing of this
14 Complaint through the date of class certification, Defendant
15 made any calls to the DNC Class members whose telephone
16 numbers had been registered on the national Do Not Call
17 Registry for over thirty days;
- 18 b. Whether Plaintiff and the DNC Class members were damaged
19 thereby, and the extent of damages for such violation; and
- 20 c. Whether Defendant should be enjoined from engaging in such
21 conduct in the future.

22 68. As a person that received numerous telemarketing/solicitation calls
23 from Defendant more than thirty days after he had registered his telephone number
24 with the National Do Not Call registry, Plaintiff is asserting claims that are typical
25 of the DNC Class.

26 69. Plaintiff will fairly and adequately protect the interests of the members
27 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
28 class actions.

1 70. A class action is superior to other available methods of fair and
2 efficient adjudication of this controversy, since individual litigation of the claims
3 of all Class members is impracticable. Even if every member could afford
4 individual litigation, the court system could not. It would be unduly burdensome
5 to the courts in which individual litigation of numerous issues would proceed.
6 Individualized litigation would also present the potential for varying, inconsistent,
7 or contradictory judgments and would magnify the delay and expense to all parties
8 and to the court system resulting from multiple trials of the same complex factual
9 issues. By contrast, the conduct of this action as a class action presents fewer
10 management difficulties, conserves the resources of the parties and of the court
11 system, and protects the rights of each Class member.

12 71. The prosecution of separate actions by individual Class members
13 would create a risk of adjudications with respect to them that would, as a practical
14 matter, be dispositive of the interests of the other Class members not parties to such
15 adjudications or that would substantially impair or impede the ability of such non-
16 party Class members to protect their interests.

17 72. Defendant has acted or refused to act in respects generally applicable
18 to The Classes, thereby making appropriate final and injunctive relief with regard
19 to the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

On Behalf of The ATDS Class and Sold Lead Subclass

24 73. Plaintiff repeats and incorporates by reference into this cause of action
25 the allegations set forth above at Paragraphs 1-72.

26 74. The foregoing acts and omissions of Defendant constitute numerous
27 and multiple negligent violations of the TCPA, including but not limited to each
28 and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular

1 47 U.S.C. § 227(b)(1)(A).

2 75. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
3 Plaintiff and the ATDS Class Members are entitled to an award of \$500.00 in
4 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
5 227(b)(3)(B).

6 76. Plaintiff and The ATDS Class members are also entitled to and seek
7 injunctive relief prohibiting such conduct in the future.

8 **SECOND CAUSE OF ACTION**

9 **Knowing/Willful Violations of the Telephone Consumer Protection Act**

10 **47 U.S.C. § 227(b)**

11 **On Behalf of The ATDS Class and Sold Lead Subclass**

12 77. Plaintiff repeats and incorporates by reference into this cause of action
13 the allegations set forth above at Paragraphs 1-72.

14 78. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple knowing and/or willful violations of the TCPA, including but not
16 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),
17 and in particular 47 U.S.C. § 227(b)(1)(A).

18 79. As a result of Defendant's knowing and/or willful violations of 47
19 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled to an award of
20 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
21 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

22 80. Plaintiff and the ATDS Class members are also entitled to and seek
23 injunctive relief prohibiting such conduct in the future.

24 **THIRD CAUSE OF ACTION**

25 **Negligent Violations of the Telephone Consumer Protection Act**

26 **47 U.S.C. § 227(c)**

27 **On Behalf of The DNC Class**

28 81. Plaintiff repeats and incorporates by reference into this cause of action

1 | the allegations set forth above at Paragraphs 1-72.

2 82. The foregoing acts and omissions of Defendant constitute numerous
3 and multiple negligent violations of the TCPA, including but not limited to each
4 and every one of the above cited provisions of 47 U.S.C. § 227(c).

5 83. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c),
6 Plaintiff and the DNC Class Members are entitled to an award of \$500.00 in
7 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
8 227(c)(5)(B).

9 84. Plaintiff and The DNC Class members are also entitled to and seek
10 injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing/Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(c)

On Behalf of The DNC Class

15 85. Plaintiff repeats and incorporates by reference into this cause of action
16 the allegations set forth above at Paragraphs 1-72.

17 86. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple knowing and willful violations of the TCPA, including but not limited
19 to each and every one of the above cited provisions of 47 U.S.C. § 227(c).

20 87. As a result of Defendant's knowing and willful violations of 47 U.S.C.
21 § 227(c), Plaintiff and the DNC Class Members are entitled to an award of
22 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
23 § 227(c)(5)(C).

24 88. Plaintiff and The DNC Class members are also entitled to and seek
25 injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff and the ATDS Class and Sold Lead Subclass members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - Injunctive relief prohibiting such conduct in the future.
 - Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing/Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff and the ATDS Class and Sold Lead Subclass members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
 - Injunctive relief prohibiting such conduct in the future.
 - Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).
 - Injunctive relief prohibiting such conduct in the future.
 - Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing/Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B) and 47 U.S.C. § 227(c)(5)(C).
 - Injunctive relief prohibiting such conduct in the future.
 - Any and all other relief that the Court deems just and proper.

JURY DEMAND

89. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted on August 1, 2023

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff